

TTAB



MODRALL SPERLING
L A W Y E R S

Via Express Mail
Post Office to Addressee

Charles A. Armgardt
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September 24, 2015

United States Patent & Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Hobel, Inc. v. Blake's Lotaburger, LLC
Opposition No. 91223374; Serial No. 86629868

To Whom It May Concern:

Enclosed please find an original and two copies of Applicant Blake's Lotaburger, LLC's Answer to Notice of Opposition in the above referenced matter. Please file the Answer in accordance with your practice and return an endorsed copy of it to me in the self-addressed, stamped envelope which is also included for your convenience.

Thanks for your attention to this matter, and please let me know if you have any questions or need anything further.

Sincerely,


Charles A. Armgardt

CAA/wco
Enclosures: as stated
cc: Opposer
Client
W2554848.DOCX

Modrall Sperling
Roehl Harris & Sisk P.A.

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Albuquerque,
New Mexico 87102

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09-24-2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HOBEL, INC.,
Opposer,

v.

Opposition No. 91223374
Serial No. 86629868

BLAKE'S LOTABURGER, LLC,
Applicant.

United States Patent & Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
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1. Answering paragraph 1 of the Notice, Applicant does not have sufficient knowledge or information to form a belief as to the allegations, and accordingly denies them.
2. Blake's admits the allegations in paragraph 2 of the Notice; and affirmatively states that Opposer's application has been refused by the USPTO on numerous grounds, including likelihood of confusion with one or more Marks owned by Applicant.
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5. Blake's denies the allegations in paragraph 5 of the Notice; and affirmatively states that any use by Opposer of "Blake's Place" for the so-called "Restaurant Services" was unlawful, as described herein, and therefore cannot give rise to any rights in derogation of Applicant and its rights.

6. Blake's admits the allegations in paragraph 6 of the Notice.

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8. In response to paragraph 8 of the Notice, Blake's restates and incorporates its responses to the prior allegations.

9. Answering paragraph 9 of the Notice, Applicant does not have sufficient knowledge or information to form a belief as to the allegations, and accordingly denies them.

10. In response to paragraph 10 of the Notice, Applicant admits only that Opposer's purported mark "Blake's Place" is similar in commercial impression to Applicant's subject mark and its Marks described below, all of which are superior to any marks or rights claimed by Opposer, and as a result, Opposer is guilty of unlawful conduct including trademark infringement and unfair competition, and is liable to Applicant therefor.

11. Answering paragraph 11 of the Notice, Applicant does not have sufficient knowledge or information to form a belief as to the allegations, and accordingly denies them.

12. In response to paragraph 12 of the Notice, Applicant admits only that Opposer's purported mark "Blake's Place" falsely suggests an affiliation with or sponsorship by Applicant, where none exists; and as a result, Opposer is guilty of unlawful conduct including trademark infringement and unfair competition, and is liable to Applicant therefor.

13. In response to paragraph 13 of the Notice, Applicant admits only that it has not granted any affiliation or connection with Opposer, a latecomer, nor has it endorsed or sponsored Opposer or its goods or services.

14. In response to paragraph 14 of the Notice, Applicant admits only that it has no control over the nature and quality of the goods or services purported to be offered by Opposer; that the value of its applied-for mark and the Marks described above would be jeopardized by refusal of the subject application and/or by favorable treatment of the Opposer's application in Serial No. 86661584; and that because of the likelihood of confusion, the latecomer Opposer and its purported mark could or would negatively reflect upon and injure the Applicant.

15. In response to paragraph 15 of the Notice, Applicant admits only that in view of Applicant's superior mark in Serial No. 86629868, and of its registered Marks described below, Opposer's purported mark "Blake's Place" is likely to cause confusion, mistake or deception; and as a result, Opposer is guilty of unlawful conduct including trademark infringement and unfair competition, and is liable to Applicant therefor.



16. Applicant denies each and every allegation in the Notice which is not specifically admitted herein.


AFFIRMATIVE DEFENSES

17. Blake's affirmatively alleges that as a result of its continuous substantial usage of its trademarks "BLAKE'S" and "BLAKE'S LOTABURGER" since adoption, these marks are the property of Applicant, the marks are valuable assets of Applicant, and they carry considerable goodwill and consumer acceptance of its products and services sold under the marks. Such ownership, goodwill and widespread usage have made the marks distinctive to

Applicant, with plain priority of ownership, and must necessarily result in a denial of this opposition proceeding, and a refusal of the Opposer's application in Serial No. 86661584.

18. Blake's further affirmatively alleges that it is the owner of numerous U.S trademark registrations, including the following ones which are material herein ("the Marks"):

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Blake's has been using the name of its founder, Blake Chanslor, and the Marks since its founding in 1952. In addition, the Marks have been used continuously in connection with the designated goods and services, beginning at least as early as the dates set forth above. All of the Marks are currently registered, and all are incontestable pursuant to 15 U.S.C. § 1065. As a result, this opposition proceeding must be denied, and the Opposer's application in Serial No. 86661584 must be refused.

19. Blake's further affirmatively alleges that its current application, for "BLAKE'S" (stylized) in IC 43, is but an extension of its now incontestable Marks identified above. It is incomprehensible as to why Opposer did not oppose the registration of the Applicant's Marks

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MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By 
/s/ Charles A. Armgardt

Charles A. Armgardt
500 Fourth St. NW #1000 (87102)
P.O. Box 2168
Albuquerque, NM 87103-2168
Telephone: 505.848.1800
Attorneys for Applicant

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It is hereby certified that this Answer or a true copy of it was sent via the delivery methods specified below, this 24th day of September, 2015, to:

Via "Express Mail Post Office to Addressee" service of the U.S. Postal Service:

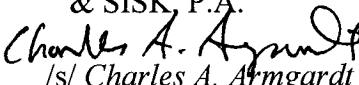
United States Patent & Trademark Office
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P.O. Box 1451
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[and]

Via first class mail, postage prepaid:

Tawnya Wojciechowski
TRW Law Group
19900 MacArthur Blvd., Suite 1150
Irvine, CA 92612
Attorneys for Opposer

MODRALL, SPERLING, ROEHL, HARRIS
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By  /s/ Charles A. Armgardt
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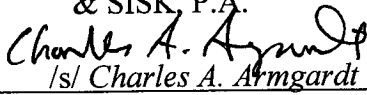
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[and]

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Tawnya Wojciechowski
TRW Law Group
19900 MacArthur Blvd., Suite 1150
Irvine, CA 92612
Attorneys for Opposer

MODRALL, SPERLING, ROEHL, HARRIS
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& SISK, P.A.

By 
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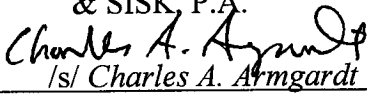
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